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Widows' Damages

ONE possible way out of the difficulties which arise in deciding whether to keep in court damages awarded to a widow or to pay out the whole or a substantial part to the widow was approved by DEVLIN, J., in the High Court last week. The scheme in question provided for the payment of the damages to trustees to hold on trust for her and her child, with directions to invest the money in a good investment trust and with power to vary the investment and pay out the income and also the capital from time to time. Counsel in the case (*Woodley* v. *Tersons, Ltd., The Times*, 28th June) was prepared to draw up the necessary trust deed without fee and suggested that the trustees should be the widow's solicitors; the case was adjourned in order that counsel might prepare a scheme on the lines indicated for approval by Devlin, J. We agree with the learned judge that there is an important question of principle—whether it is desirable that counsel and solicitors should associate themselves with a trust in this way. We incline to the view that this is one of the cases where a trust corporation is the most satisfactory trustee. There are objections in many cases to the appointment of relatives and it would often be inconvenient to appoint members of the widow's firm of solicitors. The appointment of a bank, for example, would usually be the most convenient course; a bank has local branches and nowadays it is normal to have an unrestricted investment clause in wills and settlements of which banks are trustees. The best solution to this particular part of the problem of trustee investments may well be found along these lines.

Corporal Punishment

THE criminal statistics given by Mr. BUTLER earlier this week are extremely disturbing, and it is understandable that some people are advocating extreme measures. Nevertheless, the burden of proving that there is even a case for an inquiry into whether corporal punishment should be reintroduced into our penal system rests upon those who are in favour of its reintroduction. This form of punishment was abolished in 1948 (save for one exception) not only after an exhaustive enquiry by an expert committee but also after the opportunity for second thoughts which was afforded by the interruption caused by the war. The proposal to abolish corporal punishment was contained in the abortive Bill which LORD TEMPLEWOOD (as he now is) introduced just before the outbreak of war and which had to be abandoned. The same proposal was in the Bill which became the Criminal Justice Act, 1948. It is presumptuous for the inexpert to

CONTENTS

speculate about the treatment of offenders, although in some fields the layman has to choose between contending experts. On the question of corporal punishment, however, there was a great preponderance of expert opinion in favour of abolition ten years ago, and we are not aware that there has been any significant movement of expert opinion in favour of its reintroduction. We believe, therefore, that the Government are right in rejecting the request for an inquiry. We are particularly pleased to see that it is the Government's view that the most useful form of inquiry at this stage is an analysis of the crimes of violence to obtain a clearer idea of the nature and scope of the increase in such crimes recorded in the statistics.

Costs and Greater Hardship

THERE was some discussion in the House of Commons last week about the incidence of legal costs in future possession cases where tenants will in due course seek the protection of the new Landlord and Tenant Bill. We think it would be unwise to deprive the county court judges of their discretion in the matter. The practice may differ between one court and another but our impression is that many judges do not habitually award costs to a successful landlord in greater hardship cases under the existing law, and it is reasonable to assume that the same practice will apply in cases under the new law when it comes into force. We dissent from the suggestion of Mr. DAVID WEITZMAN that there should be a provision that there shall be no legal representation on either side. There have been some experiments in recent years in depriving parties to proceedings before certain tribunals of the right to be legally represented, and they have not been satisfactory. Equally, we disagree with Mr. BROOKE'S statement that a person should be able to conduct his own case because he will not be required to argue any point of law. It is fallacious to suppose that legal representation is of value only if there is law to be argued.

Car Insurance

Mr. CHARLES F. TRUSTAM, chairman of the British Insurance Association, last week gave a gloomy forecast of future increases in motor insurance premiums. The recent rise in the level of awards of damages has undoubtedly contributed to the unfortunate experience of insurance companies, but in spite of road safety propaganda the number of claims shows no sign of falling. Mr. Trustam suggested that magistrates should suspend licences more readily. Many benches have raised the level of fines in their courts in recent months, but there has been little, if any, perceptible effect on the behaviour of motorists: suspension for a period long enough to cause inconvenience without hardship would, we believe, be a more effective deterrent than a fine. A long period of suspension often arouses the sympathy of the appeals committees of quarter sessions. Short periods of one or two months might well be tried.

A Point on Cruelty

THOSE who are called upon to advise in matters relating to divorce will wish to note the case of *Clark* v. *Clark* (1958), *The Times*, 25th June, where the Court of Appeal refused to grant a decree in favour of the wife on the ground of her husband's alleged cruelty, with which the decision of Mr. Commissioner MCKEE in *Ward* v. *Ward* [1958] 1 W.L.R. 693; *ante*, p. 472, should be compared. In *Clark* v. *Clark*, *supra*, the petitioner maintained that her husband "ceased and refused to have sexual intercourse . . . and did so deliberately, notwithstanding her frequent protestations and requests that sexual intercourse should take place between them, and in the knowledge that by his refusal he was causing her great distress and unhappiness," and contended that on this ground alone she was entitled to dissolution of her marriage which had previously been consummated. Counsel for the petitioner admitted that he had not been able to find a case where refusal of sexual intercourse had been the main or only issue to be considered. HODSON, L.J., accepted the medical evidence that the wife was suffering from "sex starvation" but thought that this did not necessarily mean that her petition should succeed. His lordship cited *Kaslefsky* v. *Kaslefsky* [1951] P. 38, where BUCKNILL, L.J., had said, in a case where the wife had refused sexual intercourse, that her husband could not rely on this fact in support of his petition on the ground of cruelty unless he could show that she had refused "because she knew it would injure his health and because she wished to inflict unnecessary pain and suffering on him." DENNING, L.J., endorsed this view by saying that the husband must prove that the wife's conduct was "aimed at" him in so far as her actions or words were actually or physically directed at him. In *Clark* v. *Clark*, *supra*, the court upheld the decision of Judge HOWARD, who had refused a decree because, in his opinion, the husband might not have refused sexual intercourse with a view to being cruel to his wife; there might have been a number of other explanations. It would seem that to have held that in such circumstances the petitioner should be awarded a decree regardless of motive would have established refusal of sexual intercourse as a matrimonial offence in the legal sense.

Change of Christian Name

As frequently happens where doctors give newly born children little chance of survival, a hospital chaplain was recently called in to christen twin girls and he chose the names Ann and Sarah. Happily the twins did not die, but the parents thought that the names which their children had been given by the chaplain were old-fashioned and sought, unsuccessfully, to have them baptised again in the names Dawn and Marlene. Perhaps the clearest statement of the law governing the alteration of Christian names may be found in *Re Parrott; Cox* v. *Parrott* [1946] 1 Ch. 183, and the judgment of VAISEY, J., in that case confirms that nobody can alter or part with a Christian name by deed poll. However, a Christian name may be legally changed by Act of Parliament or by exercise of a bishop's discretionary powers on confirmation, as explained in Phillimore's Ecclesiastical Law, 2nd ed., vol. 1, at p. 517, and illustrated in Coke's Institutes 1, 3*a*. A third possibility is the "adding" of a name on adoption, but his lordship regarded this method as anomalous. In the case of the twins, although the use of one of these methods was unlikely to have been a practical possibility, the law did not completely frustrate the wishes of the parents as the registrar concerned agreed to accept the names Dawn and Marlene as additional to Ann and Sarah, presumably acting under the powers vested in him by s. 13 of the Births and Deaths Registration Act, 1953. There may also be instances where a Christian name may be added, but not substituted, by use and reputation.

LEGAL AID COSTS IN THE COUNTY COURT

SOME POINTS ON TAXATION

A SOLICITOR who is conducting an action for an assisted litigant under the provisions of the Legal Aid and Advice Act, 1949, is (perhaps rightly) not remunerated with great profusion. It is, therefore, of some importance to the profession that the costs which are earned shall not be whittled away on taxation.

The above reflections were prompted by recent proceedings in the Clerkenwell County Court. The plaintiff brought an action against the defendant for possession on the ground of unlawful sub-letting and of nuisance or annoyance (nothing very remarkable in that). The defendant obtained a civil aid certificate but nevertheless the learned deputy judge made an order for possession. There was no order for costs as between party and party but the usual order for taxation of the defendant's costs pursuant to the Third Schedule to the Legal Aid and Advice Act, 1949.

As the claim was one for possession, there was no scale of costs necessarily applicable. Order 47, r. 15, in such cases provides that the judge may award costs on such scale as he thinks fit. The judge, however, was not asked to fix any scale and the registrar on taxation fixed scale 3, as he was entitled to do under Ord. 47, r. 40 (7) and (8). The registrar was also requested to give a direction under Ord. 47, r. 21, removing the scale maximum from all the most important items in the defendant's bill. The registrar, however, refused this direction and proceeded to tax the bill in the light of his refusal. In particular he allowed £15 only under item 6 as fee for preparation for trial.

The registrar was subsequently asked to reconsider the taxation under Ord. 47, r. 42, and on the hearing of the reconsideration he was asked once more to make the direction under Ord. 47, r. 21. This, however, the registrar again refused to do, holding that that application (though made at the time of the taxation) was in fact an interlocutory application made under Ord. 13, r. 1. That rule gives no power to reconsider, but provides that any party who is dissatisfied with the registrar's order may apply to the judge, who may vary or rescind the order and may make such order as may be just. Accordingly, the registrar held that, so far as the application for a direction under Ord. 47, r. 21, was concerned, he was *functus officio*. The defendant's solicitors, however, succeeded in their real objective, as they obtained from the registrar a written decision in which he said: "In the light of the solicitors' analysis of their preparation for trial I would have allowed them £25."

Armed with the registrar's decision, the defendant's solicitors appealed under Ord. 13, r. 1 (1) (*h*), against the registrar's refusal to give a direction under Ord. 47, r. 21. It will be recalled that that rule provides that the judge may give a direction where "the judge is satisfied from the nature of the case or the conduct of the proceedings that the costs which may be allowed may be inadequate in the circumstances." The defendant's solicitors' submission was that the discretion of the court was vested in the registrar under Ord. 47, r. 40 (8). This sub-rule was specifically introduced in 1955 when legal aid was introduced into the county courts. Accordingly, it seemed not unreasonable that the registrar should exercise the discretion conferred upon him in quite a new way (which is in effect what sub-r. (7) provides in other circumstances). It was irrelevant to speculate whether the judge would or would not have made a direction if he had ordered the taxation of costs as between party and party. Having decided that £25 was the correct figure for preparation for trial and having observed that the scale 3 maximum for that work was £15, the registrar was in a much stronger position than a judge would be in applying the provisions of Ord. 47, r. 21. The judge had to decide, without any detailed bill of costs before him, whether the scale maximum might be inadequate. The registrar decided as a fact that the scale maximum was inadequate. Accordingly, a direction was justified.

The learned deputy judge decided the appeal in the following words:—

> "I must do what seems just. The registrar must not so exercise his discretion as to prevent himself from awarding the correct sum. The only way in which I can remedy that situation is to grant the direction requested."

Accordingly the appeal was allowed.

The morals to be drawn by solicitors conducting cases under the Legal Aid and Advice Act, 1949, appear to be as follows:—

1. Where the scale is at large it is usually better not to ask the judge to fix it but to leave that to the registrar on taxation. It will then be possible to give the registrar considerably more material than the judge would be willing to look at at the end of a trial.

2. On the same reasoning it is usually better to apply to the registrar on taxation for a direction under Ord. 47, r. 21, if the facts warrant it.

3. It is convenient for the registrar to go through the bill and provisionally tax it before he decides whether to grant a certificate under Ord. 47, r. 21. If the provisional taxation shows items allowed at more than the scale maximum (in respect of items to which Ord. 47, r. 21 (3), applies) the case for granting a direction under that rule is unanswerable.

M. S. G.

DEVELOPMENT PLAN

NORTH RIDING OF YORKSHIRE COUNTY DEVELOPMENT PLAN

Proposals for additions to the above development plan were on 20th June, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land situate in the area of St. Thomas Street and St. Thomas Walk in the Borough of Scarborough. A certified copy of the proposals as submitted has been deposited for public inspection at the Town Hall, Scarborough, and County Hall, Northallerton. The copies of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 9 a.m. and 5 p.m. on Mondays to Fridays inclusive, and 9 a.m. to 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 7th August, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the North Riding of Yorkshire County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

STRAYING ANIMALS

It is now firmly established that an owner or occupier of land adjoining the highway is not under a duty to fence so as to keep his animals which are not wild by nature or, in the case of domestic animals, known to be dangerous, off the highway, but it would seem that this rule has emerged in comparatively modern times and in one respect may not yet be clearly defined.

No mention of this doctrine was made by those most distinguished common lawyers, Erle, C.J., Williams, J., Willes, J., and Keating, J., who decided *Cox* v. *Burbidge* (1863), 13 C.B. (N.S.) 430, and in *Brackenborough* v. *Spalding U.D.C.* [1942] A.C. 310, Lord Wright, although recognising the existence of the rule, was of the opinion that its limits remained uncertain. In *Heath's Garage, Ltd.* v. *Hodges* [1916] 2 K.B. 370, Lord Cozens-Hardy, M.R., was surprised that there was no direct authority on the proposition that a person is not bound to maintain a hedge or fence for the purpose of preventing sheep from straying on the highway, but it may be said that it was in this case that the Court of Appeal first formulated with any clarity the rule, which has now received general acceptance, that an owner or occupier of land adjoining a highway is not bound to fence so as to prevent animals which may ordinarily be described as harmless or tame from straying on to it.

This rule was criticised by the Court of Appeal in *Hughes* v. *Williams* [1943] 1 K.B. 574, where it was held that a farmer, the defendant, was not liable for injury caused to the plaintiff by reason of the fact that two of his (the defendant's) horses had passed through an open gate during the hours of darkness and come into collision with the plaintiff's motor car. Their lordships realised that they were bound by the rule " which has been stated or assumed to exist in several pronouncements of this court," but Lord Greene, M.R., said that it was " ill adapted to modern conditions " and the whole court (Lord Greene, M.R., Mackinnon, L.J., and Goddard, L.J.) hoped that the law might be reviewed and improved by a decision of the House of Lords. However, this was not to be.

Rule confirmed by House of Lords

As is well known, in *Searle* v. *Wallbank* [1947] A.C. 341 the House of Lords found and confirmed that the owner of a field or fields abutting on the highway is not under a *prima facie* legal obligation to users of the highway so to keep and maintain his hedges and gates, if any, along the highway as to prevent his animals from straying on to it. It appears that counsel for the appellant did not think it worth while even to argue to the contrary. If this proposition is to be overruled an Act of Parliament will now be required. It was followed faithfully in the recent case of *Annells* v. *Warneford* (1958), *The Times*, 7th May (see note at p. 352, *ante*) where the Court of Appeal, with some hesitation on the part of the Master of the Rolls, decided that the defendant, the proprietor of a riding school, in the absence of negligence, was not liable in tort because one of his chestnut ponies ran into the highway and collided with the car in which the plaintiffs were travelling. Two young girls had been asked to catch the pony and while they were chasing it round a paddock with this end in view it escaped from the enclosure and ran into the road.

" Special circumstances "

The law with regard to animals *mansuetæ naturæ* straying on to the highway which has been summarised above (also considered in an earlier article at 99 Sol. J. 702) would seem to be perfectly clear, with one point providing an exception of questionable importance and significance.

In *Hughes* v. *Williams*, *supra*, Lord Greene, M.R., said that " it is recognised in all cases relating to animals on the highway that there may be instances where special circumstances impose a duty," and the possibility of there being " special circumstances " was allowed by Lord du Parcq in *Searle* v. *Wallbank*, *supra*. Again, in *Annells* v. *Warneford*, *supra*, Morris, L.J., admitted that there " might be special circumstances giving rise to a duty of care." It is very uncertain what these " special circumstances " might be, and in this doubt may be found the only aspect of the rule in *Searle* v. *Wallbank* which remains unsettled.

It is suggested that these " special circumstances " may not be deemed merely to exist where the animal is known, or presumed to be known, to be of a savage disposition, as such cases really fall within the *scienter* rule of which no mention was made, directly at least, in the cases referred to in the previous paragraph in relation to " special circumstances." However, in *Brock* v. *Richards* [1951] 1 K.B. 529, a case which reached the Court of Appeal, Evershed, M.R., expressed the view that such matters as the relative level of the field to the highway, the nature of the highway and the amount of traffic upon it, cannot constitute qualifications to the general rule. Liability, it was found in this case, is confined to those instances where the animal is vicious or mischievous, but this does not include an animal which has a special proclivity towards straying of which the owner is aware, as did the horse whose wanderings gave rise to this particular piece of litigation.

In *Hughes* v. *Williams*, *supra*, Lord Greene, M.R., enumerated some " special circumstances " where the owner of an animal which is kept on land adjoining a highway is subject to a duty. He said that " a special duty lies on a person who is in control of an animal on a highway if the animal is one which, by its nature or some special conditions affecting it, is liable to run wild, or to bite persons or other animals, or to toss them, as in the case of a cow with a calf. Similarly, I apprehend that, if the owner or occupier of land adjoining a highway chooses to put on it an animal of such a nature or in such a condition that he knows, or ought to know, that, if it gets into the road, it will run amok, he must take special care to prevent it doing so." His lordship said that these exceptions applied to animals which " may be expected actively to do something, such as to kick, or bite, or rush madly about, and did not apply where the only thing normally to be expected from the animal is to cause a blundering obstruction in the roadway." It will be observed that the illustrations of " special circumstances " given above are closely linked to the *scienter* rule.

Further examples

However, in *Searle* v. *Wallbank*, *supra*, Lord du Parcq suggested that examples of " special circumstances " could be seen in *Deen* v. *Davies* [1935] 2 K.B. 282 and in *Aldham* v. *United Dairies* (*London*), *Ltd.* [1940] 1 K.B. 507, both decisions of the Court of Appeal. In the first case the defendant's pony escaped from a stable in Merthyr Tydfil where it was insufficiently tethered, ran into the street with the presumed intention of making its way home and injured the plaintiff, an invalid, who was making her way along the

street on crutches. It was held that the defendant was liable as he had left the pony on the highway, or in a place adjoining the highway, and he had not taken reasonable care to prevent it straying into the street, where it would naturally make its way if it was able to leave the stable. Certainly Slesser, L.J., intended that this case should be decided on the ground that its facts amounted to "special circumstances," and it is difficult to see why this should be regarded as a *scienter* action. The second case, *Aldham* v. *United Dairies (London), Ltd.* [1940] 1 K.B. 507, concerned injury to a pedestrian inflicted by a pony attached to a milk-cart. It was held that the driver knew or ought to have known that the horse was likely to injure a member of the public, that leaving it in the highway was unquestionably negligence and that for this reason the pedestrian was entitled to be awarded damages against the owners of the pony.

Many distinguished from single animal

Cunningham v. *Whelen* (1918), 52 Ir. L.T. 67, has been named as another case in which "special circumstances" determined the outcome of the proceedings in so far as that case decided that while an owner is not liable for the consequences of a harmless animal straying on the highway, the opposite was true where the plaintiff was injured when a mass of animals (twenty-four bullocks and heifers) strayed on to the highway and caused an obstruction. In reaching this decision, Molony, L.J., adopted the words of Kennedy, L.J., in *Ellis* v. *Banyard* (1911), 106 L.T. 51, where his lordship said that he would "be slow to infer that because a harmless cow or sheep is allowed to get into the highway without giving rise to a cause of action that rule applies to crowds of cattle whose mass might constitute an obstruction to travellers along the highway."

The majority of the Court of Appeal in *Wright* v. *Callwood* [1950] 2 K.B. 515 refused to find "special circumstances" where a farmer drove two calves from his field, across the highway, through a gate on the other side of the road and along a fifty-foot drive towards the farmyard. The engine of a lorry in the yard was started up with the result that the calves took fright and ran back along the drive and collided with a cyclist. Denning, L.J., dissented and thought that this was a case where *Deen* v. *Davies, supra*, should be applied.

These are a selection of the instances where the presence of "special circumstances" has been found or considered. Some of them may not appear to provide genuine exceptions to the principle enunciated in *Searle* v. *Wallbank, supra*, as they seem to fall within the *scienter* rule (e.g., *Brock* v. *Richards, supra*), or within the principle that where an animal has been brought upon or is being driven along the highway there is a duty to control it (e.g., *Aldham* v. *United Dairies (London), Ltd., supra*). Other decisions (e.g., *Cunningham* v. *Whelen, supra*) cannot be explained in this way, and for this reason the scope, but not the existence, of "special circumstances" which enable a case to fall outside the rule in *Searle* v. *Wallbank* must be regarded as uncertain. Short of legislation (it will be remembered that in 1953 a committee which included several eminent lawyers and was presided over by Lord Goddard, C.J., recommended that an occupier of land—with the exception of common, waste or unenclosed ground—should be under a duty to take reasonable care that cattle or poultry on his land do not escape from his land on to the highway: Cmd. 8746), it would seem that the way remains open for the courts to find "special circumstances" to mitigate the effect of the general rule relating to animals *mansuetæ naturæ* straying on to the highway and by which they are now so reluctantly bound.

D. G. C.

DISORDERLY HOUSES

For purposes of the criminal law disorderly houses can be divided into three classes: (1) bawdy houses; (2) gaming houses; (3) betting houses. The Disorderly Houses Act, 1751, s. 2, provides that any house or other place kept for public dancing, music or entertainment within the City of London or twenty miles thereof shall be deemed a disorderly house, unless a licence for those purposes has been obtained. This section now operates only within the administrative county of London, but there are provisions for the licensing of such places outside that area in the Public Health Acts Amendment Act, 1890, s. 51. Theatres are licensed separately by the Lord Chamberlain under the Theatres Act, 1843.

Bawdy houses

A common bawdy house can be a house or a room or a set of rooms in a house used for prostitution. Wills, J., said in *Singleton* v. *Ellison* [1895] 1 Q.B. 607 that "a brothel is the same thing as a bawdy house—a term which has a well-known meaning as used by lawyers and in Acts of Parliament. In its legal acceptation it applies to a place resorted to by persons of both sexes for the purpose of prostitution. It is certainly not applicable to the state . . . where one woman receives a number of men." It appears that where only one woman occupies a house, and there receives men for purposes of prostitution, she cannot be said to be keeping a brothel (*Caldwell* v. *Leech* (1913), 77 J.P. 254). But a different result may be reached where several women use the same premises, be it a single house or a block of flats. Thus, in the case of *Durose* v. *Wilson* (1907), 71 J.P. 263, twelve prostitutes had rooms in a block of eighteen flats. The unfortunate porter of these premises was convicted of being wilfully a party to the continued use of part of the premises as a brothel. The conviction was made under the Criminal Law Amendment Act, 1885, s. 13, which has now been superseded by the Sexual Offences Act, 1956, s. 34.

The relevant sections of the 1956 Act are as follows: Section 33 makes it an offence for anyone to keep or manage a brothel. Section 34 makes it an offence for a landlord to let the premises in the knowledge that they are to be used as a brothel, or where the premises are so used, to be wilfully a party to such use continuing. Section 35 makes it similarly an offence for a tenant to permit any part of the premises to be used as a brothel, or (s. 36) for the purposes of habitual prostitution. If the tenant is convicted under the Act the landlord may compel the tenant to assign the lease to another person of whom he approves, and if the tenant fails to do so within three months then the landlord may determine the contract.

The use by a tenant of premises for purposes of prostitution may also be a breach of the lease which will enable a landlord to determine the contract. The cases on the landlord and tenant aspects of the subject are fully discussed in earlier articles at 99 Sol. J. 920, 100 Sol. J. 293, and 101 Sol. J. 387 and 741, and will not be further dealt with here.

Gaming houses

The Gaming Act, 1845, s. 2, provides that it shall be sufficient in the absence of other evidence to prove, in support of an allegation that a house is a common gaming house, that the house is used for the playing therein of any unlawful game, and that the chances of the game are not alike favourable to all the players, or that a bank is kept by one of the players exclusively. Such a house is to be deemed a common gaming house and is forbidden by law under the Unlawful Games Act, 1541. It is not necessary, to support a conviction, that any person playing at any game in the house was actually playing for any money, stake or wager. The police may enter any gaming house and arrest persons gaming therein and seize the instruments of gaming. " Instruments of gaming " include any cards, dice, balls, counters, tables or other instruments found in any place suspected of being a gaming house. If the instruments are found in a room, and there are people in the room, it is not essential that they should actually be in the course of play for an offence to be committed.

The Gaming Houses Act of 1854 provides that if any attempt is made to delay or obstruct the police who enter a house suspected of being a common gaming house, either by fitting a bolt or chain to any external or internal door, or by giving off an alarm on the entry of the police, or if any attempt is made to remove or conceal any instruments of gaming, then that is *prima facie* evidence that an offence is being committed.

For the house to fall within the definition of a common gaming house it is not necessary that someone should be running the house to make a profit out of the gaming. It is sufficient that in the game which is being played the odds are not favourable to all the players alike. Thus, in *Daniels* v. *Pinks* [1931] 1 K.B. 374, the committee of a members' club installed " fruit machines " for the amusement of members. As the result of inserting a penny in the slot of the machine the player had the chance of making a large win. It was held that the committee members were liable to conviction for managing a common gaming house, despite the fact that it was a private club.

What is meant exactly by " unlawful games " ? According to Hawkins, J., in *Jenks* v. *Turpin* [1884], 13 Q.B.D. 505 : " It is clear that the Legislature intended them to cover and include some games which being lawful in themselves were only made unlawful when played in particular places or by particular persons." Unlawful games are listed by the same judge, at p. 524, as follows : " Ace of hearts, pharaoh (or faro), basset, hazard, passage, roulette, every game of dice except backgammon, and every game of cards which is not a game of mere skill, and I incline to add, any other game of mere chance." Baccarat was added to the list as a result of the decision in that case. It has also been held that progressive whist is an unlawful game if played in a common gaming house (*R.* v. *O.K. Social and Whist Club* (1929), 21 Cr. App. R. 119). In that case the fact that the partners in the game changed repeatedly during the course of the evening meant that the element of chance was multiplied, and it was therefore impossible to hold that it was a game of mere skill.

To constitute gaming, the game played must be one which involves an element of wagering ; each player must have a chance of losing as well as winning. In *Lockwood* v. *Cooper* [1903] 2 K.B. 428 a number of persons hired a hotel room for the purpose of playing whist, for prizes donated by third parties. It was held that this did not amount to gaming within the meaning of the Licensing Act, 1872.

In the case of card games which are not unlawful by statute, in determining whether the game is one of chance or of skill, the mere fact that skill is a dominant or sufficient factor will not in itself make the game a lawful one. The element of chance must be so slight that the game may be properly said to be one of mere skill. In *R.* v. *Tompson* [1943] 1 K.B. 650 the question arose as to whether poker and bridge were games of mere skill. The judge directed the jury that poker was not a game of mere skill but was an unlawful game, and the jury therefore convicted the accused. The convictions were quashed on appeal, the court holding that such a question was not a question of law but a question of fact to be determined by the jury on the evidence led.

Betting houses

Betting houses are declared a common nuisance and contrary to law by the Betting Act, 1853, s. 1. They are also deemed to be gaming houses within the meaning of the Gaming Act, 1845. But a shop which is considered to be a betting shop in the eyes of the law may not appear so from the ordinary point of view. Thus, it has been held that where an automatic slot machine was kept in a shop for the purpose of persons resorting to the shop being able to play the machine, then although that did not constitute a betting transaction in ordinary parlance, yet an offence was being committed (*Peers* v. *Caldwell* [1916] 1 K.B. 371).

Various premises may be used in different ways as betting houses. In *R.* v. *Porter* [1949] 2 K.B. 128 a bookmaker who, while taking refreshment in the saloon bar of a public-house, habitually accepted bets from other customers, was found guilty of using the premises for the purpose of betting with persons resorting thereto. But strangely enough, to pay off in a bar bets previously made does not amount to using the bar for such a purpose (*Bradford* v. *Dawson* [1897] 1 Q.B. 307).

On the other hand members of a bona fide club who make bets with other club members on the premises cannot be convicted of using the club for the purpose of betting with persons resorting thereto (*Downes* v. *Johnson* [1895] 2 Q.B. 203). But this does not apply to clubs which are used merely as a blind for betting purposes.

Prospects of reform ?

The growth of prostitution in recent years has become a social menace, requiring stricter legislation ; the law regarding betting shops has for long been held in open contempt without public indignation being aroused ; and the recent failure of the Crown's case against John Aspinall (popularly referred to as the " *Chemin-de-Fer* case ") demonstrates the utter confusion which now surrounds our ancient gaming laws. In the *Aspinall* case, which concerned alleged gaming in a private house in the West End of London, the deputy chairman of the court, after legal submissions, held that there was no case to answer because no evidence was being offered of habitual use for gaming of the particular premises with which the case dealt, and on that account he directed the jury to acquit.

The question of an early reform of the betting and gambling laws was raised in the House of Lords on 7th May, 1958. Viscount Astor reminded the House that the Government had given explicit pledges to introduce a Bill dealing with the matters covered by the Royal Commission on Betting and Gambling. Replying for the Government, Lord Chesham said that he could give no undertaking regarding the introduction of such legislation. We may have to wait for some time yet for the reform of our sixteenth century gaming laws.

N. G.

EXERCISE OF HYBRID POWERS OF APPOINTMENT

POWERS of appointment are generally divided into two classes, general and limited powers. The latter are sometimes referred to as special powers. A general power enables the donee to make an appointment in favour of any person or persons he pleases. It is, for many purposes, the same as having absolute ownership of the property over which the power exists. A limited power can only be exercised in favour of specified persons or classes.

Main differences

Apart from the basic difference between them, general and limited powers differ in several other ways.

1. The rule against perpetuities is applied differently. In the case of a general power, the rule is applied from the time when the power is exercised. On the other hand, in the case of a special power, the rule applies from the creation of the power.

2. Under s. 27 of the Wills Act, 1837, a general gift in a will is an effective exercise of a general, but not a limited, power of appointment.

3. A general power exercisable by deed can be exercised by the donee's trustee in bankruptcy for the benefit of his creditors. For obvious reasons, this is never so where a limited power is concerned.

4. There is nothing to stop a donee of a general power from delegating to another the discretion conferred on him by the power. Unless he is expressly or impliedly authorised to do this by the instrument creating the power, a donee of a limited power cannot do this.

5. A donee of a general power of appointment can exercise it in favour of himself, a donee of a limited power cannot.

Consent of trustees

Sometimes the consent of trustees is made essential to the exercise of a power. In such a case, this places no duty whatsoever on them in connection with the selection of the objects of the power by the donee.

Hybrid powers of appointment

Apart from the common division of powers into the two main classes, general and limited, there is what can properly be regarded as a third class. This has been conveniently styled "hybrid" powers. And it partakes, to some extent, of the attributes of each of the two main classes of powers.

A power falls into this third class where there is some restriction of an unimportant nature placed on the donee's free selection of the person or persons he wishes to benefit by his exercise of the power. Thus, e.g., a power given to *A* to appoint to anyone except *X*.

Such a power has been treated, for certain purposes, as a general power and, for other purposes, as a limited power. It was always treated as a limited power for the purposes of: applying the rule against perpetuities; s. 27 of the Wills Act, and bankruptcy law. On the other hand, so far as concerned the now obsolete Legacy Duty Act, 1796, and the ability of the donee to delegate his discretion under the power, it was regarded as a general power.

Re Triffitt's Settlement

A hybrid power was considered in the recent case of *Re Triffitt's Settlement; Hall* v. *Hyde* [1958] 2 W.L.R. 927; *ante*, p. 382. The facts were as follows.

Before her marriage in 1953, and in consideration of the marriage, the plaintiff executed a settlement of certain shares owned by her in a family business. By the same settlement, the plaintiff's father settled further shares in the same company. The trustees of the settlement were directed to stand possessed of these shares (which with the investments for the time being representing them were defined in the settlement as "the trust fund"), and the annual income thereof, upon the following trusts. "(1) As to the whole of the trust fund and the annual income thereof . . . upon trust for such person or persons other than . . . Mr. Triffitt [the plaintiff's father] and any wife of his and in such manner generally as the wife [meaning the plaintiff] shall from time to time or at any time by deed revocable or irrevocable with the consent in writing of the trustees for the time being hereof not being less than two in number which consent such trustees may withhold or give at their absolute discretion without being in any way liable for the exercise of such discretion appoint. (2) . . . subject to any such appointment . . . to pay the annual income of the trust fund to the wife during her life."

The plaintiff wished to execute a deed of appointment whereby she directed the four trustees of such deed, one only of whom was also a trustee of the settlement, to hold the trust fund upon trust for certain defined beneficiaries ". . . or any one or more of them exclusive of the other or others of them in such shares and proportions . . . and subject to such terms limitations and provisions as the trustees shall from time to time by deed or deeds revocable or irrevocable executed before the vesting day [a day defined to avoid any infringement of the rule against perpetuities] . . . appoint." The trustees of the settlement, on being asked by the plaintiff to give their consent to an appointment in this form, agreed to do so, provided that, on the matter being referred to the court for a decision, it were held that the proposed appointment was a valid one within the words of the power created by the settlement.

Upjohn, J., decided that the power given in the settlement to the plaintiff was a hybrid one. It was certainly not a limited power of appointment; and it just failed being a general one.

The trustees of the settlement had no duty to concern themselves with the selection of the objects to benefit under the power. The position was perfectly clear from the authorities. Normally, however strong may be the words of a trust instrument absolving trustees from liability, they have a duty to act honestly and to exercise proper care in what they do; and they are bound to give due consideration to every likely result of any act or omission on their part whilst acting as trustees.

The ability of the plaintiff to delegate her discretion under the power to the trustees of the deed of appointment was also considered. The learned judge came to the conclusion that such delegation was proper in the case of the power in question. There were two cases where delegation is permitted. In the first place, where the power is a general one. Since such a power gives the donee an absolute discretion as to how he will exercise the power, he is treated as having complete ownership of the property affected by the power. The second case where delegation is allowed, and this can only apply to limited powers, is where the instrument creating the power expressly allows delegation, or, alternatively, under the words

of such instrument, a right to delegate can properly be implied. In the present case, having regard to the very wide nature of the power conferred upon the plaintiff by the settlement—it was almost a general power of appointment—the court held that the right of the plaintiff to delegate the discretion given to her by the power could be implied from the words of the settlement.

Finally, the court held that there was nothing of a fiduciary, or trust, nature about the plaintiff's power of appointment. It was given to her for her own benefit. She was under no duty to make any appointment at all. And she could appoint to whoever she liked, subject only to her (*a*) not appointing in favour of the two persons expressly excluded by the settlement, and (*b*) obtaining the consent of the settlement trustees to whatever appointment she might make.

Consequently, the trustees of the settlement could properly give their consent to the deed of appointment which the plaintiff wished to execute. A. O. H.

Landlord and Tenant Notebook

THE "TEMPORARY PROVISIONS" BILL AS AMENDED

THE Notebook discussed the Landlord and Tenant (Temporary Provisions) Bill, as "presented" by Mr. Henry Brooke, "supported" by the Prime Minister and others, in our issue of 26th April last (*ante*, p. 302). The version "brought from the Commons 24th June, 1958" contains the effect of some amendments. A number of these are of the dotting of i's and crossing of t's variety, but the change which is likely to be of the greatest interest to most practitioners is one which concerns the conditions which an applicant for suspension of execution has to satisfy in order to qualify for suspension of an order for possession.

The scheme of the Bill, it will be remembered, is this: a landlord who has served a Form S notice under the Rent Act, 1957, is not to be entitled, on the notice expiring on or after 6th October, 1958, to recover possession of the decontrolled dwelling-house except by taking legal proceedings, and, if and when he does bring an action, the ex-tenant occupier may ask for a suspended order on satisfying the court of four things. These are set out in cl. 3 (1) (*a*) to (*d*). The third and fourth of those things are that rent has been paid to date and that greater hardship would be caused by making an unsuspended order than would be caused by making a suspended order. In the new version, (*c*) (payment of rent) has been re-phrased: "rent has been paid or tendered" replacing "he has paid," etc.; (*d*) is unaltered; but (*a*) has undergone substantial, and (*b*) some, modification.

Refusal of proposals

As the Bill stood, the (*a*) requirement was: "that he [the occupier] has made all reasonable efforts to secure agreement with the owner for a tenancy of the premises for a term of not less than three years"; while subs. (3) of the clause directed the court to have regard, among other things, to the means of the occupier, to his age, and to any disability to which he may be subject.

As amended, (*a*) runs: "that he has not unreasonably refused or failed to accept any proposal made by the owner for the grant of a new tenancy of the premises or part of the premises, being a tenancy for a term of not less than three years and not being a tenancy to be granted at a premium or requiring the payment of increased rent in respect of any period before the date on which the proposal was made."

The most important effect of the change is that if a landlord who has served a Form S notice has done nothing and the tenant has done nothing, the tenant may not automatically be able to bring himself within the paragraph, but if the ex-landlord owner has made an offer which could reasonably be accepted he will be in a better position than the ex-tenant occupier. It is possible that masterly inactivity on the part of the landlord will not in itself qualify the tenant, the word "any" being of vital importance; but it is not for the tenant to show that he has made reasonable efforts, etc.

The means, age and disability factors of sub-cl. (3) are retained, but the following has been added: "and (without prejudice to the generality of the foregoing provision) in considering whether a refusal or failure to accept any proposal as is referred to in the said paragraph (*a*) was reasonable, regard shall be had in particular to the terms of that proposal relating to repairs, improvements, or maintenance."

Premiums and antedating

The absolute exclusion of tenancies granted at a premium or requiring increased rent before the date of the proposal is, of course, referable to the news that some landlords were endeavouring to take more advantage of the "transitional provisions" in Sched. IV to the Rent Act, 1957, than was intended. A "question in the House" concerning the interpretation of para. 4 of that Schedule and the ministerial reply were the subject of a "Current Topic" in our issue of 15th March last (*ante*, p. 184), making the point that normally antedating affects computation only.

Part of the premises

The "or part of the premises" is another innovation, this time one which may be of use to some landlords. Ever since *Thompson* v. *Rolls* [1926] 2 K.B. 426, it has been recognised that a protected tenant may often be able to live quite comfortably in part of the dwelling-house concerned, and that the surplus may be of some value to the landlord. And this amendment may save him the trouble of seeking possession on the ground of the availability of suitable alternative accommodation consisting of part of the same premises (which cl. 2 (4) would enable him to do).

A new sub-clause, sub-cl. (4), is added to cl. 1 to provide for apportionment of the rent of part of a dwelling-house.

Other accommodation

Clause 3 (1) (*b*), which ran: "that he is unable, after taking all reasonable steps for that purpose, to obtain other appropriate accommodation" has been replaced by "that he has failed, after making such efforts as were reasonable in the circumstances, to obtain other appropriate accommodation." It is likely that this amendment is really intended to clarify and nothing more; but there may be a difference between being unable to do a thing and failing to do that thing; also between taking steps and making efforts.

Repairs

There is also a potentially useful addition to the provision in cl. 2 (2) regulating the responsibility for repairs when the Form S notice has expired but the tenant "holds over." The occupier is still to be exclusively responsible for all internal decorative repairs, and the owner exclusively responsible for all other repairs, and repairs are still defined as repairs required to make good damage or dilapidations occurring during the application of the Act to the dwelling-house; but the phrase: "(without prejudice to the liability of any person in respect of any other damage or dilapidations)" has been inserted. While on first reading I thought that some member with sound imagination and foresight had visualised a case of a neighbour's neglected tree crashing through, or a negligently driven lorry crashing into, a house, careful perusal shows that what the amendment is really concerned to do is to exclude "antecedent breaches" from the scope of the provision.

R.B.

HERE AND THERE

PILTDOWN MAN AGAIN

Is the Piltdown Man ever mentioned in well brought up anthropological circles these days? Once he enjoyed a scientific patent of nobility with the title Eoanthropos, the Dawn Man, a patriarchal ancestor of immemorial antiquity, until almost five years ago when he was unmasked as a sort of juvenile delinquent among bones and relegated to the status of a skeleton in the anthropologists' cupboard. His dawn has darkened into night after a brief but blazing day of only forty years. His godfather, you may remember, was Charles Dawson, an Uckfield solicitor, who died in 1916 at the rather early age of 52, four years after he introduced his protégé to an admiring world. When it was eventually discovered that poor Eoanthropos was the result of a mésalliance between a human skull of some antiquity and the jawbone of quite a modern ape carefully treated to simulate fossilisation, interest naturally shifted to Dawson, whom Sir Arthur Smith Woodward, a scientist of international reputation and unquestioned integrity, had actually seen uncovering the treasure at the bottom of a gravel pit. "On a warm evening after an afternoon's vain search Mr. Dawson explored some untouched gravel at the bottom of the pit when we both saw half of the human lower jaw fly out in front of the pick-shaped hammer which he was using." There was the eye-witness account. How had the quickness of the pick deceived the practised eye? Who had done what and why? Was Dawson, who, after all, was only an amateur antiquarian, just as much a dupe as the distinguished Sir Arthur? If not what was the motive for the fraud? Fame? Profit? Malice? Or just fun?

PURE FUN

At the time of the unmasking I myself suggested fun as the key, a motive very little understood or reckoned with by the solemn in assessing the probabilities of human conduct. Few can consistently resist the pleasure of saying "I told you so." On this occasion I can't, for through the kindness of a correspondent a piece of evidence, new, at any rate, to me, has just been recalled, revealing Dawson as a secret but confirmed practical joker of a singularly painstaking character. The evidence now transmitted is that of the late Rudolph Niedemeyer, a well-known Eastbourne solicitor, who died recently and who in his distant youth in 1908 was an articled pupil of Dawson, then living at Castle Lodge in Lewes. In the garden Dawson discovered an old wine cellar which he at once delightedly recognised as the raw material for a practical joke in the grand manner. Enlisting the help of his pupil, who learned a lot more than law and office routine with such a master, he first set to work on a long slab of stone, which he found lying about in Uckfield, treating it with cow dung to give it a dark and antiquated look. Then he fixed various suggestive looking pieces of old iron to the walls of the cellar to simulate fetters. When the stage was set, he announced that he had unearthed an old dungeon of Lewes Castle complete with a stone bed for the prisoner. "It was a fake from start to finish," his pupil afterwards recalled, "but papers were read about it at meetings and Charles Dawson just chuckled." Evidently, with him it was a pure case of hoaxing for hoaxing's sake, a private artistic delight without any ulterior motive of vulgar triumph in shouting "Yah!" at the hoaxed, an esoteric joke for personal use only.

DREAM DISSOLVED

The exposure of Eoanthropos as a character in humorous fiction has several useful morals especially in a time when the current social lop-sidedness consists in worshipping science as a sacred cow. One, at any rate, is that if the proper study of mankind is man, it must never lose touch with living men as we know them. If the anthropologists had started with a good deep intuitive understanding of that universal but elusive quality humour or fun Eoanthropos would have dissolved at birth in laughter. They would also have realised that scientific investigation, like all other investigation, is in constant peril of being falsified by what people want to believe and what they don't want to believe. It was because so many people wanted to believe in a creature like Eoanthropos that their dream came true, in a sense. It is pleasing to think that the fairy godfather who granted their wish was an old-fashioned country solicitor.

Richard Roe.

Mr. Norman Buckley, solicitor, of Manchester, has set up a world water speed record for 800-kilogram motorboats by covering 89·08 miles in one hour over a 5-mile triangular course on Lake Windermere.

Mr. Frank Wild, deputy clerk of Solihull, retired recently.

Mr. C. S. Wooldridge, solicitor, of Dewsbury, will be retiring this month.

The President of The Law Society, Mr. Ian D. Yeaman, gave a luncheon party on 23rd June at 60 Carey Street, Lincoln's Inn. The guests were: Dr. J. F. Ritter, Minister at the German Embassy, Lord Evans, Mr. Justice Vaisey, Sir Richard Yeabsley, Sir Bertram Long, Mr. R. L. Jackson, Sir Charles Norton, Sir Edwin Herbert and Sir Thomas Lund.

Mr. F. J. Weld, solicitor, of Liverpool, left £147,576 net.

BOOKS RECEIVED

The Lamberts Choose the Law. By MICHAEL THOMAS. pp. 142. 1958. London: Chatto & Windus, Ltd. 8s. 6d. net.

Parish Administration. By CHARLES ARNOLD-BAKER, of the Inner Temple, Barrister-at-Law, Secretary of the National Association of Parish Councils. pp. xiv and (with Index) 430. 1958. London: Methuen & Co., Ltd. £2 2s. net.

Principles of the Law of Partnership. By Sir ARTHUR UNDERHILL, M.A., LL.D. Seventh Edition by GEORGE HESKETH, M.A., LL.M., of Lincoln's Inn, Barrister-at-Law. pp. xxviii, 177 and (Index) 27. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 1s. net.

Copinger and Skone James on the Law of Copyright. Ninth Edition by F. E. SKONE JAMES, B.A., B.C.L., Bencher of the Middle Temple, and E. P. SKONE JAMES, M.A., of the Middle Temple, Barrister-at-Law. pp. xxxvi and (with Index) 917. 1958. London: Sweet & Maxwell, Ltd. £5 10s. net.

Mar's Law of Insolvency in South Africa. Fifth Edition by HAROLD EDWARD HOCKLEY, B.A., LL.B., Adovcate of the Supreme Court of South Africa. pp. liii and (with Index) 699. 1958. London: Sweet & Maxwell, Ltd. £7 16s. net.

The Company Director. By ALFRED READ, C.B.E., F.C.I.S., F.Inst. D. With a Foreword by The Rt. Hon. The Viscount CHANDOS, P.C., D.S.O., M.C. pp. xxiv and (with Index) 208. 1958. London: Jordan & Sons, Ltd. £1 5s. net.

Encyclopaedia of Planning, Compulsory Purchase and Compensation. Volume I—Planning; Volume II—Compulsory Purchase & Compensation. Revision 31: 19th May, 1958.

The *Inter Se* Doctrine of Commonwealth Relations. By J. E. S. FAWCETT, of the Inner Temple. Barrister-at-Law. pp. 48. 1958. London: The Athlone Press. 5s. 6d. net.

Russell on Crime. Eleventh Edition by J. W. CECIL TURNER, M.C., M.A., LL.B., of the Middle Temple, Barrister-at-Law. pp. cli, x and (with Index) 1,899. 1958. London: Stevens & Sons, Ltd. £10 10s. net. (Two Volumes.)

An Introduction to International Law. Fourth Edition. By J. G. STARKE, B.A., LL.B., B.C.L. (Oxon), of the Inner Temple, Barrister-at-Law. pp. xxi and (with Index) 494. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 17s. 6d. net.

Swift's Housing Administration. Fourth Edition. By STEWART SWIFT, M.B.E., and FREDERICK SHAW, D.P.A., M.R.S.H., A.M.I.P.H.E. pp. xxxiii and (with Index) 778. 1958. London: Butterworth & Co. (Publishers), Ltd. £4 7s. 6d. net.

Gibson's Probate. Sixteenth Edition by H. J. B. COCKSHUTT and A. G. COATES, LL.B., London, of Gray's Inn, Barrister-at-Law. pp. lviii and (with Index) 324. 1958. London: Law Notes Lending Library, Ltd. £2 net.

REVIEWS

The Common Calendar (A Note Book on Criminal Law for Circuiteers). By Sir FRED EILLS PRITCHARD, M.B.E., LL.D. (Liverpool), of the Northern Circuit, formerly one of Her Majesty's Judges of the Queen's Bench Division. 1958. London: Butterworth & Co. (Publishers), Ltd. £1 12s. 6d. net.

The author of this book dedicates it to the Northern Circuit, of which he is a distinguished member. As most of our readers will recall, he was also one of Her Majesty's Judges of the Queen's Bench Division until 1953, and therefore his commentaries on the criminal law, particularly on recent statutes such as the Sexual Offences Act, 1956, and the Homicide Act, 1957, are of the greatest value.

In his preface Sir Fred says "As a circuiteer at the Bar and on the Bench I often had occasion to regret the necessity of taking with me on circuit those heavy standard works on Criminal Law which from their nature are required to be comprehensive and to include lengthy chapters relating to crimes and the history of crimes rarely if ever encountered by the practitioner at Quarter Sessions and Assizes. In these circumstances I have thought that a short and small book dealing with such offences only might be of use if it sets out no more than the ingredients which must be proved in order to establish the commission of each offence and some possible defences open to persons accused of such offences."

How far does Sir Fred achieve this most praiseworthy object? In its 257 pages the book contains a great deal of information of real value to the practitioner, and maybe a young barrister in the early years of his career would find it sufficient, but with briefs increasing in importance and variety, he would almost certainly feel the need to have "Archbold" with him, too, just as in the same way the student preparing for law examinations would find the book a useful adjunct but not, it is to be feared, a substitute for the more comprehensive text-books like "Kenny" and "Cross and Jones."

The book consists of four chapters which give an outline of the more common crimes, followed by others on Insanity, Corroboration, Confessions, Conspiracy, and the sentences which may be imposed. This is followed by a number of leading cases, beginning with *R.* v. *M'Naghten* where the answers of the judges are given in full and concluding with "a review and summary of decisions since 1894 relating to the admissibility of evidence of criminal acts other than those covered by the indictment."

An appendix gives a number of Acts and sections of Acts relating to criminal proceedings, many of which are in constant use by courts and advocates—a great deal of the Larceny Act, 1916, and the Sexual Offences Act, 1956, whilst the Homicide Act, 1957, is reproduced almost in full.

The selection of these Acts and sections is rather singular. A great deal of the Marriage Act, 1949, is quoted as well as s. 7 of the Marriage Act, 1898. Do these Acts so often come up for consideration in the criminal courts as to deserve such prominence? On the other hand, the Magistrates' Courts Act, 1952, is represented by only one section—s. 107—and that dealing with restrictions on imprisonment. Should not some of the sections of the Act dealing with the involved and complicated procedure before justices and questions of their jurisdiction have merited inclusion?

Evidence. By RUPERT CROSS, M.A., B.C.L., Solicitor. 1958. Butterworth & Co. (Publishers), Ltd. £2 15s. net.

Evidence is a subject which does not normally cross the path of those solicitors who do not engage in litigation: but it is a subject about which all solicitors should know the general principles. It is acknowledged to be a difficult subject for students of the English law to master. It has a history all its own and whilst one cannot agree with the description of it given recently by a leading Q.C. one must admit that it has some curiously loose ends. He wrote of it as being "founded apparently on the propositions that all jurymen are deaf to reason, that all witnesses are presumptively liars and that all documents are presumptively forgeries, it has been added to, substracted from and tinkered with for two centuries until it has become less of a structure than a pile of builder's debris." Well, that may be a little too severe! That it is not a pile of debris is brought out very clearly in this completely new and orderly presentation by an author who is not only a distinguished Oxford don but also a qualified solicitor. It seems to be the ideal book for the more advanced student and for the practitioner who wants to keep in clear perspective the broad general principles

of this vital subject. It is not too technical for the university student nor too theoretic for the practising solicitor, who after all, however immersed he may be in practice, retains his training as a student. The whole range of subjects coming under evidence—for example, problems of the exercise of judicial discretion, the compellability of witnesses and the protection afforded to affairs of State—are faithfully dealt with. This work is to be recommended to those who are truly interested in a difficult branch of our procedural law.

Aspects of Justice. By Sir CARLETON KEMP ALLEN, M.C., Q.C., Hon. D.C.L. (Glasgow), F.B.A., F.R.S.L., J.P., of Lincoln's Inn. 1958. London: Stevens & Sons, Ltd. £1 5s. net.

This collection of essays ranges over four main topics, of which the two that receive most extensive treatment are Justice (considered first qualitatively and then in relation to the ideals of Mercy and Liberty and to the realities of Expediency and Practical Law) and Cruelty, chiefly in the sphere of domestic law. Much of the material has been contributed to periodical and anthological literature or has been delivered in lecture form; notwithstanding which its reproduction in the present more permanent shape is entitled to a cordial welcome. For the many-sided nature of Justice, in philosophy and in practice, is an apt subject for Sir Carleton's ripe wisdom and felicitous exposition; and a developing department of modern law such as that concerning matrimonial cruelty needs academic analysis and a degree of re-thinking from time to time for the better understanding of practitioners as well as theorists. Indeed, the author so fully supports his essay on cruelty between husband and wife with citation of cases still under daily discussion in the courts as to warrant the assertion that it should be studied by all who are engaged in matrimonial practice.

Among the features of Sir Carleton's views on the attributes of Justice are a strong expression of doubt as to the retributive theory, and a timely reminder that a judge who administers an unjust law is still acting justly. Observing, in this connection, that an unjust law has less prospect of survival and enforcement than one which takes account of moral considerations, the author permits himself a footnote voicing a general fear of totalitarian trends. "At the present juncture of the world's history no man can predict the future of the 'consent of the governed.'" Yet this foreboding sentiment is isolated. The pre-occupation of the essay is with history and present fact.

After the two weighty treatises so far mentioned in this review, the concluding chapters of the book give almost a sense of light relief. The lecture on the Literature of the Law was delivered to the Royal Society of Literature and its thesis is not designed to convince lawyers. Nearer home in its message is the article on the Conscience of Counsel, seriously reasoned indeed, but depending for its interest largely on the sensational Australian case of George Dean, beside which fiction must surely pale and totter.

Thus does the author both enlighten and entertain us in the one volume.

Trade Union Law and Practice. By HORATIO VESTER, of Gray's Inn and the Oxford Circuit, Barrister-at-Law, and ANTHONY H. GARDNER, O.B.E., T.D., Solicitor. 1958. London: Sweet & Maxwell, Ltd. £1 15s. net.

In the preface to this book the authors tell us that they "have tried to make as clear and simple a statement of the law relating to trade unions and its underlying principles as the subject will permit," and they express the hope that their book will prove useful not only to legal practitioners, but also to officers and members of trade unions. The reader will have little doubt that the authors' endeavours have been eminently successful, and that their book will prove helpful to all who have occasion to advise on or to apply this branch of the law.

The book deals comprehensively, but none the less fairly succinctly, with the Trade Union Acts and the related common law rules governing the torts and crimes which may arise out of trade disputes. Its only fault, perhaps, is that in their desire to deal with all aspects of each topic discussed, the authors have repeated themselves in a number of places. The immunity of trade unions and their members from actions for tort, for example, is not only dealt with at length in the chapters devoted to that subject, but ss. 1, 3 and 4 of the Trade Disputes Act, 1906, are also dealt with in greater or less length in the chapters on conspiracy, on strikes and lock-outs, and on torts committed by union members. It is easy to forgive the fault, however, when it is remembered that the book is intended for use by laymen as well as lawyers, and that the laymen expects the whole of the law relating to the problem he has in mind to be dealt with in one place.

In addition to regulating trade unions as we understand them to-day (i.e., combinations of workmen), the Trade Union Acts also govern trade associations of manufacturers and distributors, which exist principally to regulate the price at or conditions on which their members will sell their goods or perform their services. These trade associations are also seriously affected by the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948, and the Restrictive Trade Practices Act, 1956, and the authors have therefore thought it necessary to deal with part of these Acts, particularly the provisions of the 1956 Act relating to resale price maintenance. It is very doubtful whether this is a useful addition. The trade unionist and his legal adviser are not concerned with the 1948 and 1956 Acts, while the member of a trade association and his legal adviser will not find enough in this book about those Acts, and will consequently have to turn elsewhere. Henceforth the most useful division of the subject-matter of this branch of the law is undoubtedly going to be into the law relating to trade unions (including the law relating to collective wage agreements, wage councils, industrial conciliation and the Industrial Court) and the law relating to monopolistic and restrictive practices affecting competition between manufacturers and distributors. When the authors prepare their second edition they will do well to confine themselves to the first of these divisions, and they should then find that the space they save is ample to deal with the topics related to trade union law which are mentioned above in parenthesis.

Stone's Justices' Manual, 1958. Ninetieth Edition. Edited by JAMES WHITESIDE, O.B.E., Solicitor, Clerk to the Justices for the City and County of the City of Exeter, and J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. 1958. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. Two volumes. Thin Edition: £4 17s. 6d. net. Thick Edition: £4 12s. 6d. net.

The Magistrates' Courts Act, 1957, is perhaps the most noteworthy accretion to this year's Stone, but quite a large number of other statutes and of new decisions have been assimilated. The title Landlord and Tenant has been extensively revised consequent on the passing of the Rent Act, 1957, and the sturdy old title Bastardy has disappeared in favour of Affiliation Proceedings, to agree with the title of last year's consolidating Act.

Index to the Statutes in Force, covering the legislation to 31st December, 1957. pp. clxxxv and 2165. 1958. London: Her Majesty's Stationery Office. Two volumes, £6 6s. net.

This is an indispensable work, enabling the reader to find his way to the existing general law on any subject, wherever it appears in the statute book. The scheme is to group, under titles descriptive of recognised branches of the law, index entries setting out in general terms the subject-matter of the enactments which constitute those branches. Against those entries are inserted regnal year citations of the current enactments which support each proposition indexed. A chronological list of all Acts referred to shows the titles under which each Act appears, in part or in whole, in the index.

Handwriting: A National Survey, together with a Plan for Better Modern Handwriting. By REGINALD PIGGOTT, National Diploma in Calligraphy, F.R.S.A. pp. 188. 1958. London: George Allen and Unwin, Ltd. £1 5s. net.

The author has collected many thousands of examples of handwriting, over 400 of which are reproduced, and has analysed and classified them according to standards of legibility, professions and trades, and types of pen and style. In his plan for better modern handwriting he not only discusses the basic alphabet but goes into the questions of makes of pen, paper and ink, with illustrated examples.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

REVENUE: DEATH DUTY: GIFT: NOT "RETAINED TO ENTIRE EXCLUSION" OF DONOR

Chick and Another v. Commissioner of Stamp Duties

Viscount Simonds, Lord Tucker, Lord Keith of Avonholm, Lord Somervell of Harrow, Lord Denning

17th June, 1958

Appeal from the Supreme Court of New South Wales.

On 19th February, 1934, John Chick (the deceased) transferred by way of gift to his son, the appellant Clifford John Chick, a pastoral property near Gurley, New South Wales, known as "Mia Mia," the gift being made without reservation or qualification or condition. On 25th July, 1935, the deceased, the donee son and another son, the appellant Jack Wesley Chick, entered into an agreement to carry on in partnership the business of graziers and stock dealers. The agreement provided, *inter alia*, that the father should be the manager of the business and that his decision should be final and conclusive in connection with all matters relating to its conduct; that the capital of the business should consist of the livestock and plant then owned by the respective partners; that the business should be conducted on the respective holdings of the partners and such holdings should be used for the purposes of the partnership only; that all lands held by any of the partners at the date of the agreement should remain the sole property of such partner and should not on any consideration be taken into account as or deemed to be an asset of the partnership, and any such partner should have the sole and free right to deal with it as he might think fit. Each of the three partners owned a property, that of the donee son being that which had been given to him by his father in 1934, and each partner brought into the partnership livestock and plant, and their three properties were thenceforth used for the depasturing of the partnership stock. That continued up to the death of the father in 1952. The respondent, the Commissioner of Stamp Duties, thereupon claimed that under s. 102 (2) (*d*) of the New South Wales Stamp Duties Act, 1920–56, the property given to the son should be included in the dutiable estate of the deceased on the ground that it had not, after the date of the partnership agreement, been "retained" by the donee "to the entire exclusion of the deceased" within the meaning of s. 102 (2) (*d*) of the Act. The Supreme Court of New South Wales upheld that contention. The appellants, the executors of the deceased, now appealed.

VISCOUNT SIMONDS, giving the judgment, said that while it was not disputed that the donee son had assumed *bona fide* possession and enjoyment of the property immediately upon the gift to the entire exclusion of the father, he had not, on the facts, thenceforth retained it to the father's entire exclusion, for under the partnership agreement, and whatever force and effect might be given to that part of it which gave a partner the sole and free right to deal with his own property, the partners and each of them were in possession and enjoyment of the property so long as the partnership subsisted. Where the question was whether the donor had been entirely excluded from the subject-matter of the gift, that was the single fact to be determined, and, if he had not been so excluded, the eye need look no further to see whether his non-exclusion had been advantageous or otherwise to the donee. It was irrelevant that the father gave (if he did give) full consideration for his right as a member of the partnership to possession and enjoyment of the property that he had given to his son; their lordships in this connection adopted the words of Isaacs, J., in *Lang* v. *Webb* (1912), 13 C.L.R. 503, at p. 517. It was to be observed that in *Oakes* v. *Commissioner of Stamp Duties of N.S.W.* [1954] A.C. 57, on *dicta* in which the appellants relied, the Board appeared to have been dealing with the second limb of the subsection—whether the donor was entirely excluded from any benefit. Their lordships agreed with the reasoning and conclusion in *Commissioner of Stamp Duties (N.S.W.)* v. *Owens* (1953), 88 C.L.R. 67. The value of "Mia Mia" must be included in the father's estate for death duty purposes. Appeal dismissed.

APPEARANCES: *Sir Garfield Barwick*, Q.C., and *Robert Ellicott* (both of Australia) (*Waltons & Co.*); *Gordon Wallace*, Q.C. (of Australia) and *Anthony Cripps*, Q.C. (*Light & Fulton*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] **[3 W.L.R. 93**

Court of Appeal

SALE OF GOODS: INNOCENT MISREPRESENTATION: ACCEPTANCE OF DELIVERY: CLAIM TO RESCIND

Long *v.* Lloyd

Jenkins, Parker and Pearce, L.JJ. 19th May, 1958

Appeal from Glyn-Jones, J.

On 19th October, 1956, the plaintiff, a haulage contractor, saw a newspaper advertisement inserted by the defendant offering for sale at £850 a 1947 Dennis 12/14-ton lorry described as in "exceptional condition." On the telephone that evening the defendant told the plaintiff that the lorry was in "first-class condition." On the next day the plaintiff saw the vehicle at the defendant's premises. The defendant said that the lorry was capable of a speed of 40 miles an hour. On 22nd October, 1956, the plaintiff, accompanied by the defendant, took the lorry for a trial run on the road. The defendant made various representations as to the lorry, one of which was that its fuel consumption was 11 miles to the gallon. The plaintiff noticed several minor defects on the run, but on the defendant assuring him that there was nothing wrong with the vehicle of which he had not told him, the plaintiff there and then bought the lorry for the reduced price of £750, paying half the purchase price and leaving the balance to be paid later. On 23rd October, 1956, a receipt was posted to the plaintiff by the defendant: "Received from [the plaintiff] the sum of £375 by cheque being half payment of Dennis vehicle DDW 864 as tried and approved by the above. Balance remaining £375." On 24th October, 1956, the plaintiff drove the lorry from Sevenoaks, where he carried on business, to Rochester to pick up a small load. On the journey the dynamo ceased to function and the plaintiff was advised to fit a reconstructed dynamo. He noticed also that an oil seal was allowing oil to escape, that there was a crack in one of the wheels, and that the vehicle had consumed eight gallons of fuel for a journey of about 40 miles. That night he told the defendant of these defects. The defendant said that the dynamo was "all right" when the lorry left him and offered to pay half the cost of the reconstructed dynamo. This the plaintiff accepted. The defendant denied any knowledge of the broken oil seal. The next day the dynamo was fitted and the lorry was driven to Middlesbrough by the plaintiff's brother. On 26th October, 1956, the plaintiff learnt from his brother that the lorry had broken down on its journey. In consequence, the plaintiff wrote to the defendant complaining of leakage or consumption of oil from the sump, of a fuel consumption of only nine miles a gallon, and of the fact that instead of the lorry being a 40 miles an hour vehicle it was an effort to keep it at 25 miles an hour with the 4-ton load. In an action by the plaintiff for rescission of the contract on the ground of innocent misrepresentation, Glyn-Jones, J., gave judgment for the defendant. The plaintiff appealed. *Cur. adv. vult.*

PEARCE, L.J., delivering the judgment of the court, said that it had been argued for the plaintiff that in the circumstances of this case he was entitled to rescind the contract. This argument was founded on the view expressed on this somewhat vexed question by Denning, L.J., in the comparatively recent cases of *Solle* v. *Butcher* [1950] 1 K.B. 671 and *Leaf* v. *International Galleries* [1950] 2 K.B. 86, at p. 90. That view, while accepting, so far as it related to matters of title, the well-established principle that rescission of a contract for the sale of land would not be granted after completion on the ground of innocent misrepresentation (see *Wilde* v. *Gibson* (1848), 1 H.L. Cas. 605, and *Brownlie* v. *Campbell* (1880), 5 App. Cas. 925), rejected as no longer authoritative *Seddon* v. *North Eastern Salt Co., Ltd.*

[1905] 1 Ch. 326, the well-known case concerning sales of shares, in which Joyce, J., clearly stated the law to be that the court would not grant rescission of an executed contract for the sale of a chattel or chose in action on the ground of innocent misrepresentation. Denning, L.J.'s condemnation of *Seddon* v. *North Eastern Salt Co., Ltd., supra*, was by no means fully accepted by the two other members of the court in *Leaf* v. *International Galleries, supra*, and the question was thus left open in *Leaf's* case. In the present case the court thought it was unnecessary, as it was in *Leaf's* case, to decide whether the innocent misrepresentation relied on by the plaintiff gave rise to a right of rescission after completion of the contract, because the court was satisfied that his right to do so, if it ever existed, had been lost by the time he purported to reject the lorry. A strict application to the facts of the present case of Denning, L.J.'s view expressed in *Leaf's* case to the effect that the right (if any) to rescind after completion on the ground of innocent misrepresentation was barred by acceptance of the goods must necessarily prove fatal to the plaintiff's case. In the circumstances, the act of the plaintiff in dispatching the lorry on a business trip to Middlesbrough amounted to a final acceptance of the vehicle by the plaintiff, for better or worse, and had extinguished any right of rescission remaining in him after completion of the sale. They would dismiss the appeal. Appeal dismissed. Leave to appeal to the House of Lords.

APPEARANCES: *Eric Crowther* (*Farmar & Miller*, Sevenoaks, Kent); *Lindsay Cullen* (*Piesse & Sons*, for *Abbott, Sturgess & Co.*, Richmond, Surrey).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law] [1 W.L.R. 753

LIMITATION OF ACTIONS: DEATH OF TORTFEASOR: ACTION BROUGHT WITHIN SIX MONTHS OF LETTERS OF ADMINISTRATION

Airey v. Airey

Jenkins, Parker and Pearce, L.JJ. 13th June, 1958

Preliminary point of law.

On 24th February, 1951, the driver of a motor-car was killed in an accident in which his passenger was injured. Letters of adminstration to the driver's estate were not taken out until 18th March, 1957. On 9th September, 1957, the passenger issued a writ against the administrator of the driver's estate, claiming damages for negligence in respect of the injuries which she had sustained in the accident. The defendant contended that the action was barred by s. 2 of the Limitation Act, 1939. In the Queen's Bench Division on 28th March Diplock, J., said that the short question of law was whether on the true construction of s. 32 of the Limitation Act, 1939, the action was one for which a period of limitation was prescribed by the Law Reform (Miscellaneous Provisions) Act, 1934. Section 1 (3) of the Act of 1934, among other things, prescribed a period within which a particular class of action must be brought, namely, an action brought against the personal representative of a deceased person in respect of a cause of action which arose within six months before that person's death. An action which fell within that particular class was thus at the time of the passing of the Limitation Act, 1939, an action for which a period of limitation was prescribed by some "other enactment" within the meaning of s. 32 of that Act, with the consequence that s. 2 did not apply to it. As this action fell within that particular class, it was not barred by s. 2 of that Act. In 1954, s. 1 (3) of the Act of 1934 was amended by the Law Reform (Limitation of Actions, etc.) Act, 1954, so that it was no longer necessary that the cause of action should have arisen within six months of the death. Furthermore, the general limitation period for actions for damages for personal injuries was reduced to three years. It would seem, therefore, that to-day, although so long as a tortfeasor lived no action could be brought against him for damages for personal injuries after three years had passed since the cause of action arose, the moment he died, however long after the cause of action arose, an action could be brought for the tort against his personal representative, since the only limitation period for such an action was six months after the appointment of his personal representative. Judgment for the plaintiff. The defendant appealed.

JENKINS, L.J., delivering the judgment of the court, said that the words of s. 1 (3) (*b*) of the Act of 1934 requiring proceedings in a case such as the present to be taken within six months of the taking out of representation, already imposed a period of limitation, and, on the true construction of the section, ousted the six-year period of limitation applicable to torts as imposed by the Limitation Act, 1623. The intention of the legislature was to give the injured party a reasonable chance of bringing an action by making time run against him only from the date on which representation was taken out and an action became possible. At the same time delay in the adminstration of the estate was obviated by making the period a short one. Section 32 of the Act of 1939 excluded the application of the Act to any action for which a period of limitation was prescribed by any other enactment. Section 1 (3) (*b*) of the Act of 1934 was such an enactment, and accordingly the only period of limitation applicable to the present action was the six months prescribed by the Act of 1934, the operation of the Act of 1939 being excluded. Contrary to a view expressed by Diplock, J., in the course of his judgment, the law had not been altered, so far as regarded a case like the present, by the Act of 1939. The court would not express any view on the question whether the conclusion reached involved the corollary that actions which were statute-barred in the lifetime of a tortfeasor became once more maintainable after his death, if brought within six months of the taking out of representation. Appeal dismissed.

APPEARANCES: *Patrick O'Connor* and *E.W. Eveleigh* (*Theodore Goddard & Co.*, for *Swinbourne & Jackson*, Gateshead); *Roy Wilson*, Q.C., and *Paul Curtis-Bennett* (*L. Bingham & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 729

Chancery Division

VARIATION OF MARRIAGE SETTLEMENT: DETERMINABLE LIFE INTEREST: DISCRETIONARY TRUST

In Re Allsopp's Marriage Settlement Trusts

Vaisey, J. 20th May, 1958

Adjourned summons.

By a marriage settlement dated 6th September, 1916, a fund was settled on trust to pay the income thereof to the wife during the joint lives of the husband and the wife, and after her death, on trust to pay the income to the husband for life, subject to determination in certain events. The settlement further provided that in the case of determination of the husband's life interest during his lifetime there was to be a discretionary trust in favour of the husband and "issue of the intended marriage." The parties were married on 20th September, 1916, and there was one child of the marriage. The marriage was dissolved on 8th August, 1928, and by an order of the Divorce Division dated 1st July, 1929, it was provided that the settlement of 6th September, 1916, "be varied by extinguishing all the rights powers and interests of the [husband] in and under the said settlement as if he were already dead and had died in the lifetime of the [wife]." The trustees of the settlement took out a summons to determine whether the order operated as a failure of the husband's life interest in the event of his surviving the wife, so that the discretionary trust would take effect, or as a failure of the trust in his favour by reason of his death during the wife's lifetime so that the discretionary trust could not take effect.

VAISEY, J., said that, looking at the matter from the commonsense point of view, it would be a rather capricious conclusion to reach that, although the husband's contingent life estate in remainder had been completely extinguished, yet the ancillary trusts and powers which grew out of that life estate in the case of forfeiture and other incidents survived. On the whole, he thought that the destruction of the life interest did destroy the interests of the unborn issue and he would so decide. The proper declaration to make was that the effect of the settlement and of the order of the divorce court varying that settlement was to cause completely to fail the husband's reversionary life estate and, together with that reversionary life estate, the contingent discretionary trusts which, on the failure or determination of that life estate, were declared for the benefit of himself and the issue of the marriage. Declaration accordingly.

APPEARANCES: *J. A. Armstrong* (*Public Trustee*); *H. E. Francis* (*Gillhams*, for *George T. Richards & Morgan*, Bournemouth).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 78

TRUSTEE: POWER OF ADVANCEMENT: SETTLEMENT

***In re* Wills' Will Trusts**

Upjohn, J. 23rd May, 1958

Adjourned summons.

By cl. 14 of his will a testator gave his residuary estate on trust as to two-fifth parts for his wife for life and as to three-fifth parts for his children who, being male, should attain the age of twenty-five, or, being female, should attain that age or marry under it; and after the death of his wife as to the two-fifth parts on the same trusts as those concerning the three-fifth parts. By cl. 15 the share of each daughter was settled on her for life with remainder to her issue. Clause 18 provided that the trustees "after the determination or failure of every prior life or other interest . . . or previously thereto with the consent in writing of every person in existence for the time being entitled to any such interest . . . whether vested or contingent to raise any part . . . of the then expectant contingent or vested share portion or legacy of any person under any of the trusts . . . [of the will] . . . and to pay or apply the same for his or her advancement or benefit or for the benefit of any child or children . . . of such person" as the trustees should think fit. The testator died on 11th October, 1927, leaving surviving him five children, the eldest being a son, *M*, who was born on 4th October, 1915. In 1939 *M* married and on 31st May, 1940, twin sons were born. On 15th June, 1940, the trustees in purported exercise of the power contained in cl. 18 executed a deed reciting that they had appropriated certain investments to the share of residue to which *M* was contingently entitled, and declaring that those investments should be held on certain trusts for the twin sons on their attaining the age of twenty-one, and if they failed to attain that age, then on the trusts applicable if the deed had never been executed. On 26th June, 1941, another son was born to *M*, who duly attained the age of twenty-five but died on 16th March, 1943. The trustees took out a summons to determine whether the advancement clause in the will was void for remoteness, and whether, if not, the deed of 1940 was a valid exercise of the power conferred by it.

UPJOHN, J., said that a power of advancement was intended to permit the donee of the power to anticipate the absolute vesting of a share, but when the share had vested absolutely the power necessarily came to an end. "Vested" in cl. 18 bore its *prima facie* meaning of vested in interest. Taking the view that on its true construction the power came to an end in respect of sons' shares as and when each son attained twenty-five, no question of invalidity on the ground of remoteness could arise in relation to a son's share. Accordingly, in relation to *M's* share the power of advancement contained in cl. 18 was valid and did not offend the rule against remoteness. The second question was whether the purported exercise of the power conferred by cl. 18 in and by the deed of 1940 was valid. The authorities established the proposition that trustees exercising a power of advancement might make settlements on objects of the power if the particular circumstances of the case warranted that course as being for the benefit of the object of the power. The question to be answered was whether this transaction could properly be regarded as the raising and payment or application of part of the share of residue to which *M* was then contingently entitled "for the benefit of any child, children or wife" of *M*? The answer was that it was a raising, because the scheduled investments were "raised" in a broad sense by the trustees, not by being realised, but by being taken out of the trusts of residue and held on new trusts for the benefit of the twins; that could not be affected by the circumstance that in certain events the trusts might fail and the scheduled investments fall back into residue. Furthermore, it was an application for the benefit of *M's* two eldest children and not a mere appointment of new trusts. Trustees could not under the guise of making an advancement create new trusts merely because they thought they could devise better trusts than those which the settlor had chosen to declare. They must honestly have in mind some particular circumstances making it right to apply funds for the benefit of an object or objects of the power. Having reached the conclusion that some application was right and proper, it was a question to be determined in all the circumstances of the case whether the application should be out and out or whether it was desirable to create certain trusts. In the present case there was an overwhelming case for an immediate application to protect the twins in case their father should die under twenty-five and a simple settlement creating contingent interests was the best way of effecting that application. The deed of 1940 was a valid exercise of the power conferred by cl. 18. Declarations accordingly.

APPEARANCES: *J. A. Brightman, C. Montgomery White*, Q.C., *D. H. McMullen, Lionel Edwards*, Q.C., *E. B. Stamp* and *T. A. C. Burgess* (*Trower, Still & Keeling*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [3 W.L.R. 101

Queen's Bench Division

DEVELOPMENT OF CARAVAN SITE WITHOUT PRIOR PLANNING PERMISSION: MACHINERY OF ACT USED FOR DELAY: JURISDICTION TO GRANT INJUNCTION

A.-G. v. Smith and Others

Lord Goddard, C.J. 5th June, 1958

Action.

On 28th March, 1955, the first defendant, without obtaining planning permission, began to use land of which he was the owner as a site for caravans. On 23rd April, after an enforcement notice, pursuant to s. 23 of the Town and Country Planning Act, 1947, had been served on him, he applied for planning permission to develop the land as a caravan site, and the operation of the enforcement notice was thereby suspended. Permission was refused and the defendant appealed to the Minister. On 31st December the Minister dismissed the appeal. By that time it had been made clear to the defendant that planning permission had not been refused by reason of any objection to the site, but because it was the policy of the local planning authority not to allow caravan sites in their district, as it was part of the Green Belt, but on 20th June, 1956, another application for planning permission was made, which was refused. The caravans remained on the site and on 5th September the defendant pleaded guilty to an offence under s. 23 (4) of the Act and was fined £25. On 7th October, after a summons applying for a daily penalty had been served, the caravans were removed to a second site in a next-door field, and on 10th October the defendant was again convicted and fined £2. On 6th November the defendant applied for planning permission in respect of the second site, which application was refused. On 26th January the second defendants (a company of which the defendant was one of two directors) applied for planning permission to develop a third site, on a nearby farm belonging to the third defendant, as a site for caravans, and about the same time some of the caravans moved on to that site. The application was refused and the company appealed to the Minister. On 11th March, 1957, the Attorney-General, on the relation of the local urban district council, issued a writ for an injunction restraining the defendants from using or causing or permitting to be used as a caravan site any land within the boundaries of the council without the prior grant of planning permission under the Act. By about 25th March, 1957, all the caravans had moved to the third site. On 6th July the Minister dismissed the appeal in respect of that site and subsequently two further applications for planning permission relating to nearby sites on the same farm were made. Both applications were refused and appeals brought against the refusals were dismissed by the Minister on 24th April, 1958. Enforcement notices in respect of the use of the third site had been served on 23rd October, 1957, but at the date of the hearing of the action the caravans were still there. The relator council alleged that, by moving from one unauthorised site to another in the district, the defendants were flouting the enforcement provisions of the Act and bringing the law into disrepute. The defendants contended that development without permission was not in itself unlawful, and that, since no offence was committed under the Act until an effective enforcement notice had been contravened, they were not acting in breach of the Act in taking advantage of the procedure laid down by it.

LORD GODDARD, C.J., said that the sense of s. 12 (1) of the Act was obvious; it was that development of land carried out without permission was unlawful and contrary to the Act. It did not follow that a penalty was incurred at once, but development carried out without permission was carried out at the developer's own risk. The history of the case showed that the defendants intended to hold the Act at defiance as far as they could by going on making repeated little moves from one field to another

and then applying for permission which they knew they would not get, and then appealing so that they could get a period of grace during which they could take the profits from the caravans. The authorities, particularly *A.-G.* v. *Wimbledon House Estate Co., Ltd.* [1904] 2 Ch. 34, cited and followed by Devlin, J., in *A.-G.* v. *Bastow* [1957] 1 Q.B. 514, showed that although a statute might provide a penalty for acts done in breach of it, if it was a matter of public right, the Attorney-General was entitled to apply for an injunction. The Act of 1947 was obviously designed for the public good and therefore if a defendant showed by his conduct that he intended to avoid and act in breach of it so far as and for as long as he could, the Attorney-General was entitled to an injunction. The defendants' course of conduct showed an intention to hold the Act at defiance and to use its machinery not for the purpose of making genuine applications for planning permission, but for the purpose of delay and, therefore, there was jurisdiction to grant an injunction. If there was jurisdiction then it was a case in which his lordship, as a matter of discretion, would most certainly grant an injunction. Injunction granted.

APPEARANCES: *R. E. Megarry*, Q.C., *Neil McKinnon*, Q.C., and *Andrew Leggatt* (*Champion & Co.*); *J. Ramsay Willis*, Q.C., and *B. Wingate-Saul* (*Clarke & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 81

LIBEL: DEFENCE OF FAIR COMMENT ON MATTER OF PUBLIC INTEREST: TEST OF FAIRNESS

Silkin *v.* Beaverbrook Newspapers, Ltd. and Another

Diplock, J., and a jury. 10th June, 1958

Jury action.

The plaintiff, a man prominent in public life, a Privy Councillor and an active member of the House of Lords, brought an action against the printers and publishers and the editor of a newspaper for alleged libel contained in the following paragraph: "Sugar for Silkin. From these humble Tories I turn to a lordly Socialist. Forward the first Baron Silkin. Observe the return to Britain of the Heinkels—not in the skies but on the rolling roads. These economical little runabouts are selling briskly in the petrol famine. They are seen everywhere—even in New Palace Yard, Westminster, where M.P.s park their cars. What has this to do with Lord Silkin? Why, he is chairman of Noble Motors who market the Heinkels in Britain. And his son, former Socialist candidate, Mr. John Silkin, is a director. Oh, the eloquence that solemn, portly Lord Silkin has churned out in the House of Lords against arming the Germans. He has said that part of his case is 'emotional.' 'I feel it is wrong that so soon after the events of the war we should join hands with them to-day for the purpose of combining our forces.' Of course, when Lord Silkin joins hands with the Germans now, he represses his emotions. It is just good solid business. From which no doubt he makes a fine profit." The plaintiff alleged that the words meant that he was prepared to sacrifice his principles for selfish reasons of personal profit. The defendants pleaded, *inter alia*, that the words were fair comment made *bona fide* and without malice on a matter of public interest, namely, the attitude of a member of the House of Lords to Germany and the Germans. It was conceded that the facts on which the comment was made were true, and malice was not alleged by the plaintiff.

DIPLOCK, J., summing up, told the jury that, as they were here concerned with the right to freedom of speech, and the matter was ruled to be one of public interest, the right of comment was rightly very wide. First of all, who was entitled to comment? The answer was "everyone." The technical name "fair comment" given to this defence was a little misleading. It might give the impression that the jury had to decide whether they agreed with the comment. If that were the question, the limits of freedom which the law allowed would be greatly curtailed. People were entitled to hold and to express freely on matters of public interest strong views, views which the jury might think were exaggerated, obstinate or prejudiced, provided—and this was the important thing—that they were views which they honestly held. The basis of our public life was that the crank, the enthusiast, might say what he honestly thought just as much as the reasonable man or woman. What was said here was that the comment was so strong that it passed out of the domain of criticism and that no one could on the facts honestly hold the views as to the plaintiff's conduct which were expressed in the article. The test was: Would a fair-minded man, holding strong views, obstinate views, prejudiced views, have been capable of making this comment? If the answer to that was yes, then the verdict must be for the defendants. The answers which juries had given in cases of this kind to that question had formed the law which lay at the basis of freedom of speech in this country. Thus, though this case was simple, it was important. Verdict and judgment for the defendants.

APPEARANCES: *P. Colin Duncan* and *A. T. Hoolahan* (*Blacket Gill & Topham*); *Gerald Gardiner*, Q.C., and *Helenus Milmo* (*Allen & Overy*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 743

Court of Criminal Appeal

CRIMINAL LAW: EVIDENCE: STATUTORY DECLARATION PROVING DISPATCH OF GOODS BY RAILWAY: FORM: EXACT TERMS OF STATUTE TO BE COMPLIED WITH

R. *v.* Marley

Lord Goddard, C.J., Cassels and Diplock, JJ. 14th May, 1958

Appeal against conviction.

The appellant was convicted at Surrey quarter sessions of the larceny of a quantity of clothing in the possession of the British Transport Commission, which had been dispatched from Nottingham to London. At the trial, it was proved that the appellant had taken two chests to a goods station in London, given an assumed name and asked to have the chests sent to Morden station. He collected them two days later, but was stopped by the police when driving away and, when opened, the chests were found to contain the stolen property which must have been put in by a confederate at the other station. At the trial, the prosecution, to prove the dispatch of the goods, tendered declarations made by packers of parcels of the goods, in accordance with s. 41 (3) of the Criminal Justice Act, 1948. In all but one of them the declarant, after stating, "I packed the goods," and describing the addressing and contents of the parcel, stated, "it was handed to British Railways the same day for conveyance by rail to destination." The deputy-chairman admitted the declarations, overruling an objection that they did not comply with the terms of s. 41 (3) as the declarants did not state therein that they themselves had dispatched the goods. The appellant appealed against conviction on the ground that the declarations were wrongly admitted.

LORD GODDARD, C.J., said that the point taken on the appeal raised for the first time a question concerning a most useful provision in s. 41 (3) of the Criminal Justice Act, 1948. Its purpose was to avoid the necessity of having to call witnesses from all over the country to trace goods stolen in the course of transit or at the place of destination where the dispatch and course of travel had to be proved. The declarants in the present case were packers who proved the preparation of the parcel. That was the preliminary part of the dispatching. They described the packing up and addressing of the parcel, its contents and value, and (except in one case which was all right because the declarant said, "I handed it") they then said that the parcel "was handed" to British Railways for conveyance. If the declarant did not himself hand the parcel he ought either to have said, "I saw it handed," or else the person who actually handed it ought also to have made a declaration. It was almost an unnecessary formality, but where a statute allowed evidence by statutory declaration to be given it was most important that the exact terms of the statute should be complied with. The right course here would have been for somebody to have said of his own knowledge that the goods had been handed either by him or by some person in his presence to the British Transport Commission. There was, therefore, a hiatus in the declarations, but the court would not allow that to set aside a proper conviction for an extremely clever theft. They would apply the proviso to s. 4 (1) of the Criminal Appeal Act, 1907, as nobody could have any doubt in this case that no substantial miscarriage of justice had occurred. The appellant was clearly a party to the stealing of the goods. The court would dismiss the appeal.

APPEARANCES: *S. Lewis Langdon* (*Registrar, Court of Criminal Appeal*); *M. Corkrey* (*Solicitor, British Transport Commission*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] [1 W.L.R. 750

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Agriculture Bill [H.C.] [26th June.
Bradford Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [23rd June.
Interest on Damages (Scotland) Bill [H.C.] [23rd June.
Landlord and Tenant (Temporary Provisions) Bill [H.C.] [24th June.
Local Government (Omnibus Shelters and Queue Barriers) (Scotland) Bill [H.C.] [23rd June.
Maidstone Corporation (Trolley Vehicles) Provisional Order Bill [H.C.] [23rd June.
Medical Act, 1956 (Amendment) Bill [H.C.] [23rd June.
Pier and Harbour Provisional Order (Great Yarmouth) Bill [H.C.] [23rd June.
Pier and Harbour Provisional Order (King's Lynn Conservancy) Bill [H.C.] [23rd June.
Pier and Harbour Provisional Order (Sheerness) Bill [H.C.] [23rd June.
Trading Representations (Disabled Persons) Bill [H.C.] [23rd June.

Read Second Time :—

British Transport Commission Bill [H.C.] [26th June.
Drainage Rates Bill [H.C.] [26th June.
Opencast Coal Bill [H.C.] [26th June.
Penybont Main Sewerage Bill [H.C.] [26th June.
Shell (Stanlow to Partington Pipeline) Bill [H.C.] [26th June.

Read Third Time :—

City of London (Various Powers) Bill [H.L.] [24th June.
Disabled Persons (Employment) Bill [H.C.] [26th June.
Falmouth Harbour Bill [H.L.] [26th June.
Kent County Council Bill [H.L.] [24th June.
Opticians Bill [H.C.] [24th June.

In Committee :—

Litter Bill [H.C.] [26th June.
Local Government Bill [H.C.] [24th June.

B. Questions

Forest of Dean Administration

Earl St. Aldwyn stated that the report of the Committee appointed by the Forestry Commissioners in June, 1955, to review the situation in the Forest of Dean and to recommend steps to adjust the administration of the Forest to modern requirements was likely to be presented to the Forestry Commissioners within a month. [23rd June.

Trusts and Premium Bonds

Asked whether the Government were prepared to accept purchases of premium bonds in the names of trustees, the Marquess of Lansdowne said that the Government would accept purchases of premium bonds from any individual over sixteen, but such bonds must be registered only in the name of the individual purchaser. Moreover, premium bonds were generally unsuitable for investments for most trusts since they produced no income, the prizes being regarded as an accretion of capital. Also, there was a strict limit on individual holdings, the bonds were not transferable and they must be encashed on the death of the registered holder. The then Chancellor of the Exchequer in June, 1956, had explained that he thought it unlikely that trustees would purchase these bonds, as it could be done only in the case where there was a single trustee and no beneficiary was entitled to enjoy the income of the trust fund. In reply to a further question, the Marquess said that the bonds did rate as Government securities, and they were therefore an authorised trustee investment. [26th June.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Chequers Estate Bill [H.C.] [26th June.

To amend the deed of settlement set out in the Schedule to the Chequers Estate Act, 1917 ; to authorise the payment of Exchequer grants in aid of the expenses of the administrative trustees under that deed, as amended ; and for purposes connected with the matters aforesaid.

Read Second Time :—

Ashton-under-Lyne Stalybridge and Dukinfield (District) Waterworks Bill [H.L.] [23rd June.
Children Bill [H.L.] [27th June.
Rochdale Corporation Bill [H.L.] [23rd June.

Read Third Time :—

British Transport Commission Order Confirmation (No. 2) Bill [H.C.] [26th June.
Costs of Leases Bill [H.C.] [27th June.
Distribution of Industry (Industrial Finance) Bill [H.C.] [27th June.

B. Questions

Actions for Enticement

The Attorney-General refused to introduce legislation to abolish actions for enticement. He did not think that there was any question of the courts being exploited for the purpose of making money or any general demand for the abolition of this cause of action. [24th June.

Appeals from Local Valuation Courts

Mr. H. Brooke said that an appellant who could not appear in person before a local valuation court could secure the right of appeal to the Lands Tribunal by arranging for any neighbour, friend or relative to make a formal appearance on his behalf. [27th June.

STATUTORY INSTRUMENTS

County of Inverness (Eas Mor, Skye) Water Order, 1958. (S.I. 1958 No. 997 (S.45).) 5d.

Exchange of Securities (No. 3) Rules, 1958. (S.I. 1958 No. 1006.) 5d.

Import Duties (Exemptions) (No. 11) Order, 1958. (S.I. 1958 No. 1014.) 5d.

Import Duties (General) Order, 1958. (S.I. 1958 No. 973.) 9s. 8d.

Injuries in War (Shore Employments) Compensation (Amendment) Scheme, 1958. (S.I. 1958 No. 1003.) 5d.

London Traffic (Prohibition of Waiting) (Romford) Regulations, 1958. (S.I. 1958 No. 1017.) 5d.

National Insurance (New Entrants Transitional) Amendment Provisional Regulations, 1958. (S.I. 1958 No. 1018.) 5d.

Nottingham Ring Road Trunk Road (Extension) Order, 1958. (S.I. 1958 No. 983.) 7d.

Poisons List Order, 1958. (S.I. 1958 No. 1015.) 6d.

Poisons Rules, 1958. (S.I. 1958 No. 1016.) 7d.

Retention of Cables, Main and Sewers under Highway (County of Cambridge) (No. 2) Order, 1958. (S.I. 1958 No. 982.) 5d.

Stopping up of Highways (County of Derby) (No. 6) Order, 1958. (S.I. 1958 No. 1019.) 5d.

Stopping up of Highways (County of Derby) (No. 7) Order, 1958. (S.I. 1958 No. 1020.) 5d.

Stopping up of Highways (County of Devon) (No. 3) Order, 1958. (S.I. 1958 No. 985.) 5d.

Stopping up of Highways (County of Glamorgan) (No. 4) Order, 1958. (S.I. 1958 No. 986.) 5d.

Stopping up of Highways (County of Gloucester) (No. 8) Order, 1958. (S.I. 1958 No. 984.) 5d.

Stopping up of Highways (County of Leicester) (No. 7) Order, 1958. (S.I. 1958 No. 1001.) 5d.

Stopping up of Highways (London) (No. 1) Order, 1958. (S.I. 1958 No. 987.) 5d.

Stopping up of Highways (London) (No. 24) Order, 1958. (S.I. 1958 No. 999.) 5d.

Stopping up of Highways (County Borough of Northampton) (No. 1) Order, 1958. (S.I. 1958 No. 998.) 5d.

Stopping up of Highways (City and County Borough of Plymouth) (No. 3) Order, 1958. (S.I. 1958 No. 1007.) 4d.

Stopping up of Highways (County of Surrey) (No. 4) Order, 1958. (S.I. 1958 No. 1013.) 5d.

Stopping up of Highways (County of York, West Riding) (No. 9) Order, 1958. (S.I. 1958 No. 1000.) 5d.

Valuation Roll (Procedure Dates) (Scotland) Order, 1958. (S.I. 1958 No. 1009 (S.46).) 5d.

Wages Regulation (Dressmaking and Women's Light Clothing) (England and Wales) (Amendment) Order, 1958. (S.I. 1958 No. 1002.) 5d.

Wages Regulation (Hat, Cap and Millinery) (England and Wales) (Amendment) Order, 1958. (S.I. 1958 No. 1008.) 5d.

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet.*

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Schedule V—Variation of Gross Value—Rent Recoverable

Q. A tenant occupied a flat whose rateable value on 31st March, 1956, was gross £18, net £11. The valuation list coming into force on 1st April, 1956, increased the gross to £50, net £40. On 4th April, 1956, the tenant served a notice of proposal on the valuation officer to reduce the gross to £40, net £30. The tenancy was inclusive, and from 1st April, 1956, the landlord claimed the rate increases as additional rent and these were henceforth paid by the tenant. On 4th October, 1957, the tenant's proposal was determined and the gross rateable value was reduced to £40, net £30. No notice of increase of rent has yet been served on the tenant and we have been asked to advise as to the position. It seems to us that Sched. V, para. 3 (1) (*a*), applies. If so, could the landlord have served a notice of increase of rent on the 7th July, 1957, and if so at what rateable value should this have been based ? If this is not so an anomalous position would appear to arise, because if a notice could not be served until the proposal was determined on 4th October, 1957, taking effect on 1st January, 1958, the tenant would appear to have gained a three months' respite at the landlord's expense. The refund of rates which became due as a result of the reduced valuation has to be refunded to the tenant, and we are being asked to advise as to the exact position as to payment of rent since the Act became due, the tenant having agreed to pay what could have been legally demanded of him despite the non-service of the requisite notice.

A. We do not consider that para. 3 (1) (*a*) of Sched. V to the Rent Act, 1957, is applicable as it is concerned with an alteration of rateable value affecting the question of decontrol. The problem is concerned with the rent recoverable, which is based on gross value ; the provisions for the modification of gross value are contained in Pt. II of Sched. V. By para. 6, if in pursuance of a proposal made before the 1st April, 1957, the gross value is varied after the 7th November, 1956, that gross value becomes the relevant gross value for the purposes of fixing the rent limit. Accordingly, the rent limit is now determined in relation to the £40 gross value. But as at the time the Act came into force the gross value was shown in the list as £50 the landlord would have been entitled to serve a notice of increase based on that figure. To meet a situation such as this, para. 16 of Sched. V provides that on the gross value being altered the notice is not invalidated but is to take effect as if based on the new gross value. The tenant would, presumably, be entitled to deduct what are now known to be overpayments. In our opinion, therefore, a notice of increase could have been served on the Act's coming into force and the effect of paras. 6 and 16 of Sched. V is that that notice would be treated as increasing the rent to the rent limit calculated on the gross value as determined consequent on the tenant's proposal.

Notice of Increase—Validity—Unsigned Notice—Accompanying Letter

Q. A statutory notice of increase was regularly served upon a monthly tenant on 4th February, 1958, to effect an increase of £1 12s. 6d. per month as from 12th May, and a further 10s. 10d. per month as from 12th November. The notice declared that it was given by an agent on behalf of the named landlord. The figures are not contested, but the tenant now claims that the notice was bad, because the agent omitted to sign printed Form A. The form was sent with a letter in the following terms :—

> " We act for —— your landlord, and, as you are probably aware, the effect of the Rent Restriction Act, 1957, is to entitle her to increase your rent. We enclose a statutory notice in this respect."

The letter was duly signed. May such a notice accompanying such a letter be regarded as being in a form substantially to the same effect as the prescribed form and thus good ?

A. We know of no decision in point ; but, in our opinion : (i) it is arguable that the notice was valid and (ii) a case can be made for amending it if it was not.

(i) The Rent Act, 1957, s. 2 (2), requires " service by the landlord on the tenant of a notice of increase in the prescribed form specifying the amount of the increase " and the Rent Restrictions Regulations, 1957, reg. 3, requires " forms contained in the first schedule to these regulations, or forms substantially to the same effect." The subsection shows that the amount of the increase is the important consideration, there being no reference to signature. While the argument may seem far-fetched, in our opinion a contention that the form and letter together constituted a valid notice of increase could be supported by reference to the judgment of Darling, J., in *R.* v. *Daye* [1908] 2 K.B. 333 (envelope and contents) ; we think that support could also be found in Lord Anderson's judgment in *M'Kellar* v. *M'Master* [1926] S.C. 754, in which a bad notice was followed by a corrective notice—the suggestion being that, in the case submitted, the accompanying letter supplied the omission.

(ii) If an application to amend were made to the county court, on the footing that the omission of a signature did render the notice invalid, we consider that, in the circumstances, the facts should be held to fall within the principles laid down in *Stewart* v. *Currie* [1925] S.L.T. 17. Such an application (Sched. VI, para. 2) can be made in the course of proceedings.

"THE SOLICITORS' JOURNAL," 3rd JULY, 1858

In 1844 Mr. W. H. Barber, a solicitor in busy practice, was convicted of being concerned in extensive forgeries and sentenced to transportation for life. He subsequently received a free pardon and was readmitted to the profession. On the 3rd July, 1858, THE SOLICITORS' JOURNAL reported his evidence before a Parliamentary Committee which was then investigating his case: "After my conviction I was sent, heavily chained by the leg, to Millbank, and after being there for four months I was, with 250 others, put on board the *Agincourt* ship, still heavily chained. I had to sleep in my chains for four nights and then when we had got well out to sea the chains were taken off all the prisoners. On being landed in Norfolk Island, I was, with 220 other prisoners, taken to the barracks, but in consequence of the great heat of the island and the change of diet fifty of us were invalided and ordered not to go to work . . . Soon afterwards the commandant of the island, Major Child . . . requested the 40 or 50 of us who had been invalided by the medical man to pass before him . . . About 10 men passed by him unnoticed, but when I approached . . . he called out 'Let that man's hair be cut,' although my hair had been cut close the previous day. He then said, 'How is it that you have not to work?' I replied that I had been ordered not to go to work by the medical man. Upon that Major Child shook his fist at me and said, 'I will see to you, Mr. Barber' . . . Several applications were made by persons in the island to obtain my services as a clerk . . . I was applied for by Lieutenant Lloyd but his application was refused . . . I was appointed 'wardsman,' by far the most loathsome, perilous and unhealthy occupation upon the island. My duties were to preserve order in a dormitory of 200 criminals, among whom were murderers. I was locked up with these ruffians from 7.0 in the evening . . ."

NOTES AND NEWS

Honours and Appointments

Mr. JOHN CHARLES DUNDAS HARINGTON has been appointed a Judge of County Courts. He will be the Judge of the Hampshire Circuit (Portsmouth, Southampton, Isle of Wight, etc.) in succession to His Honour Judge Tylor, Q.C., who died recently. Mr. Harington will relinquish his Recordership of New Windsor.

Miscellaneous

GENERAL COUNCIL OF THE BAR

In recognition of the services rendered to the council as its chairman for more than five years between 1952 and 1957, the General Council of the Bar has co-opted the Rt. Hon. Sir HARTLEY SHAWCROSS, Q.C., a member *honoris causa*.

DEVELOPMENT PLANS

[*See also p. 479, ante*]

BRIGHTON DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved, with modifications, the Brighton development plan.

DURHAM COUNTY DEVELOPMENT PLAN

Eaglescliffe Junction and Long Newton Amendment (1958)

Stockton Rural District

Proposals for alterations or additions to the above development plan were on 16th June, 1958, submitted to the Minister of Housing and Local Government. The proposals relate to land at Eaglescliffe Junction and Long Newton in the Rural District of Stockton. Certified copies of the proposals as submitted have been deposited for public inspection at the County Planning Office, 10 Church Street, Durham, and also at the Stockton Rural District Council Offices, Cromer Lodge, Yarm Lane, Stockton-on-Tees. The copies of the proposals so deposited together with copies of the relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above during normal office hours. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 30th July, 1958, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Durham County Council at the office of the Clerk of the County Council, Shire Hall, Durham, and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

OBITUARY

MR. D. B. JACKSON

Mr. Donaldson Bell Jackson, solicitor, of Newcastle upon Tyne, died on 19th June, aged 83. He was admitted in 1897.

MR. A. LLOYD-JONES

Mr. Arthur Lloyd-Jones, solicitor, of Ealing, W.5, died on 22nd June, aged 86. He was admitted in 1895.

PRACTICE NOTE

Evidence of mental incapacity in Probate matters

Where application is made for a grant of representation for the use and benefit of a person incapable of managing his own affairs, and the applicant is not a person authorised by the Court of Protection to apply, evidence of incapacity will be required.

When the incapable person is a patient (whether certified or not) who is resident in an institution, the Probate Registrar will normally accept a certificate from the Medical Superintendent or Deputy Medical Superintendent in the following terms:—

[*Name of institution*]

[*Name of patient*]

I certify that:

1. The above-named patient, who is now resident in this institution, is in my opinion through mental infirmity arising from disease or age incapable of managing his affairs.

2. In my opinion the above-named patient is unlikely to be fit to manage his own affairs within a period of three months.

(Sgd.).....

[*Deputy*] *Medical Superintendent*

Date.....

If the Medical Superintendent is unable to give such a certificate, the matter should be referred to the Registrar for directions.

Evidence of the incapacity of a person not a resident patient should be in the form of an affidavit by the patient's doctor.

B. LONG,
Senior Registrar,
23rd June, 1958. Principal Probate Registry.

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